

Chapter 12

Introductory and Preliminary Provisions

Reference to the Figure 7.1 (on p.45) is recommended for the conventional order of these provisions.

12.1 Introductory Provisions

12.1.1 Long title

This is a brief statement giving a **short summary of the principal way or ways in which the statute will affect the law** by indicating the central legal mechanisms it employs. Before short titles became conventional (only in the latter part of the 19th century) the long title was the only title (statutes were conventionally more usually referred to by reference to the year or years of the reign of the monarch in which they were enacted), and it was a device for limiting the scope of parliamentary debate. The length of the long title is not necessarily related to the length of the statute itself.

The form used typically involves introductory words:

An Act to [provide for] [authorise] [establish] [regulate] [prohibit] [impose a tax on] [amend].....

and, at the end, words showing incidental purposes (typically administrative, offence and evidence provisions):

.....and for [related matters] [connected purposes] NOT e.g.purposes connected therewith

And so a typical long title might read:

An Act [of Parliament] to provide for the licensing of dealers in motor vehicles; and for connected purposes.

However, with an amending Act, whose sole purpose is to make a series of unconnected amendments to another Act, the long title usually states simply:

An Act to amend the Second-hand Dealers Act.

But it might be otherwise if the amending Act had a single specific purpose:

An Act to amend the Criminal Procedure Act to abolish preliminary enquiries and establish a new procedure for committals for trial.

The long title is part of the Act and may be used in interpreting its provisions.

12.1.2 Preamble

In most Commonwealth jurisdictions this is now an obsolescent device. It explains the background to the statute and hence **the reasons why it has become necessary to legislate**. Its use thus tends to invite detailed debate in the legislature on basic questions of policy over and above those that might be raised during the second reading, something governments tend not to want to encourage.

It is still occasionally used, however, in the following cases:

- Constitutions and Acts of constitutional importance
- legislation giving effect to international agreements (citing dates of adoption, etc.)
- legislation of a formal or ceremonial character
- private Acts of Parliament
- decrees of military regimes.

There is a tendency to continue to use a somewhat archaic form for drafting preambles:

Whereas...
And whereas...
Now therefore be it enacted by the Parliament of Utopia as follows...

More modern means of expression would be on the following lines:

It is desirable that the...language should be given equal prominence to English in the conduct of official or public business in Western Utopia.

It is also desirable that the...language should be able to be used by those who wish to do so in legal proceedings in Western Utopia.

It is therefore enacted by the Parliament of Utopia...

A Treaty entitled...was signed on behalf of Utopia at...on...

Under the Treaty Utopia undertook to...and to give legal effect to Articles...

It is therefore enacted...

12.1.3 Enacting formula

This is a formal statement to the effect that the legislating authority has agreed to the measures specified. It will be a set formula in each jurisdiction, often provided for in the Constitution, which may vary slightly within a jurisdiction, for example for Bills which amend the Constitution itself.

12.2 Preliminary provisions

12.2.1 Short title

This is a convenient label by which the statute is known and usually cited, and by which it can be easily indexed. What follows applies also to subsidiary legislation (where the feature is conventionally known as a ‘citation’), although particular matters relevant to subsidiary legislation are also considered below. Its necessary characteristics are that it is:

- **Accurate**, giving as close an idea as possible of the contents of the legislation; some skill may be needed in finding an accurate title for legislation that makes a series of related, but essentially different provisions. Each of the following examples, all concerned with tobacco, suggests a slightly different emphasis in its contents:

Tobacco Act	
Tobacco Industry Act	
Tobacco Processing Act	
Tobacco Products Act	Tobacco Products (Control) Act
Tobacco Advertising Act	Tobacco Advertising (Prohibition) Act
Tobacco Smoking Act	Tobacco Smoking (Regulation) Act

The use of brackets in the short title is considered below.

- **Short and succinct:** it is a **label** more than a description; bad short titles would be:

Prevention of Activities in Relation to Money-laundering Act
[*Money-laundering Act* would be better]

Offences in Relation to Patterns of Racketeering Activities Act
[*Racketeering Act* would be better]

Promotion of Harmony in Industrial and Trade Relations Act
[*Industrial Relations Act* would be better]

- **Distinctive and unique**, so that it cannot be confused with, for example, other legislation on a similar topic. Where there might be a danger of confusion, one of three devices can be used:
 - use of a bracketed word or words (see below)
 - use of a year (a device in practice needed normally only where an indirect amending system is in operation – see Chapter 16):

Hire Purchase Act 2010
Hire Purchase Act 2014

- where more than one piece of legislation on the same subject matter is made in the same year (a situation in practice much more common with subsidiary than primary legislation):

Finance (No. 2) Act 2014
 Building (No. 3) Regulations 2016
 Customs and Excise (Remission) (No. 15) Order 2013.

- **Easy to say aloud:** bad short titles from this point of view (as well as that of lack of brevity) would be:

Seaside Sale of Seashore Shells Act
 Specifications for Shops and Supermarkets (Shelving) Regulations.

Conventionally, the short title contains also the year of introduction into Parliament in the case of a Bill, or of enactment in the case of an Act. One or two words (accompanied by the word ‘Act’ and the year) should usually be enough:

Road Traffic Act 1999
 Companies Act 2007
 Money-laundering Act 2009
 Second-hand Dealers Act 2016.

If a running law revision system is in operation then, in some jurisdictions, when the Act is reprinted for inclusion in the volumes of the laws, the year will be dropped from the title and a chapter number will be allocated to it. The exact form this takes will depend on the style adopted in the law revision process. Examples might be:

Insurance Act, Cap. 312
 Companies Act, Cap. 30.01.

The abbreviation ‘Cap.’ (from the Latin word *caput* – chapter) is usually used.

A device very widely used in short titles is that of adding **explanatory words in brackets**. This is appropriate in various cases:

- (a) If there are different statutes on related topics and some deal with only a specific aspect of it:

Evidence Act 1988
 Evidence (Civil Proceedings) Act 2001
 Evidence (Computerised Records) Act 2011
 Evidence (Forensic Examinations) Act 2015

- (b) If the Act is limited in geographical area in its application:

Road Traffic (Scotland) Act 2001
 Land Use (Zanzibar) Act 2004
 Housing (Northern Province) Act 2016

It should be noted that this device should be limited as indicated and that its **general** use (so that **all** legislation in a jurisdiction contains the bracketed name of that jurisdiction) is both tiresome and pointless; see further under “Application provisions” below. For these reasons the following forms should be avoided:

Road Traffic (Utopia) Act 2001
 Land Use (Utopia) Act 2004
 Housing (Northern Province) (Utopia) Act 2016

But, assuming that Western Utopia is a state or province within Utopia, and a different regime is to apply there, compare the correct form:

Land Use (Western Utopia) Act

- (c) In order to give prominence to the **key word** in the title so that indexing and general referencing may be more helpfully accomplished:

Debts (Summary Recovery) Act 2001
rather than Summary Recovery of Debts Act

Trustees (Perpetual Succession) Act 2006
rather than Perpetual Succession of Trustees Act

or even

Corruption (Independent Commission on) Act 2010
rather than Independent Commission on Corruption Act

If the drafter were to begin these short titles with the first word in the brackets, the resulting title would be very unhelpful to anyone not acquainted with the statute book looking in an index for the law in that particular area.

- (d) In amending statutes (note that this can lead to double brackets):

Road Traffic (Amendment) Act 2016
 Housing (Northern Province) (Amendment) Act 2016

But note that most jurisdictions do **not** employ the style that inserts the word 'Act' twice:

Road Traffic Act (Amendment) Act 1996
 Housing (Northern Province) Act (Amendment) Act 1998

Brackets, especially in the cases referred to in paragraph (a) above, also help to preserve the **uniqueness** of the short title.

Exactly the same considerations apply to subsidiary legislation, although as already noted, for technical reasons this usually does not have a 'short title' (as there is no long title) but rather a 'citation'. The usual practice in drafting a citation is to follow the wording of the parent Act:

Insurance Act	Insurance Regulations
Civil Procedure Act	Civil Procedure Rules
Customs & Excise Act	Customs & Excise (Remission) Order

However, a combination of the different uses discussed above could sometimes lead to a very unwieldy short title or citation, especially the latter, as subsidiary legislation is likely to be amended much more often:

Housing (Local Authorities) (Northern Province) (Amendment) (No. 2) Regulations 2010.

In such a case, it would be better, instead of following the title of the parent Act – in this case the Housing (Local Authorities) Act – to adopt a citation for the principal regulations that is less likely to lead to problems, for example:

Council Housing (Northern Province) Regulations 2010.

Or even, so long as there is no danger of a duplication of citations of legislation relating to different geographical areas (i.e. so that each one remains **unique**), leaving the area concerned to be designated by an application provision (see section 12.2.5 and Chapter 17 for notes on application provisions) in the text of the regulations, and reducing the citation merely to:

Council Housing Regulations 2010

so that the previous unwieldy example could thus be reduced to:

Council Housing (Amendment) (No. 2) Regulations 2010.

It is recognised, however, that in failing to follow the wording of the short title of the enabling Act, there might, in the absence of a comprehensive database, be some difficulty in locating the subsidiary legislation in question.

12.2.2 Commencement

Rules for when statutes and subsidiary legislation come into force are usually contained in an Interpretation Act. Typically these will be that an Act comes into force on the date that it is published in the *Gazette*, or alternatively on the date it receives the assent of the Head of State. However, for various reasons it is often desirable to delay the coming into force of an Act for one or more of the following reasons:

- more time is needed to set up administrative arrangements
- subsidiary legislation, on which the working of the Act depends, has to be made
- explanatory material needs to be prepared for the guidance of those affected.

It can sometimes be necessary to give an Act **retrospective** effect (e.g. when validating other legislation, or providing for backdated salary increases for

constitutional offices; see further Chapter 17). If a different **prospective** date from that in the general Interpretation Act rule is required, it can be done by:

- empowering someone (usually the Minister) to declare a date, or different dates, of commencement
- providing for commencement on a specified future date, or at the end of a specified period after enactment
- providing that the Act is to come into force on the happening of some event (e.g. the ratification of a treaty).

Often a power to bring an Act into operation needs to be accompanied by a power (if it does not already exist as a background rule in the Interpretation Act) to bring different provisions into operation at different times.

12.2.3 Interpretation Provisions

These exist mainly to avoid uncertainties and ambiguities, and to avoid tedious repetition. They are dealt with in Chapter 9.

12.2.4 Objects/purpose provisions

These have been favoured in some jurisdictions as context indicators and aids to interpretation. If used, they should set out what it is that the Act **intends to achieve**.

This is different from a **long title** (which states **the way in which the Act affects or changes the law**) and a **preamble** (which states **why it has been necessary to legislate**).

Objects provisions are of use particularly in legislation which is complex or wide-ranging, or which makes innovatory changes to the law. They are not of value where the legislation:

- has narrow or obvious aims
- is short (i.e. where its policy objectives are easily seen)
- amends other legislation
- makes a number of unconnected changes to the law.

Arguments against the use of objects provisions include the following:

- they focus parliamentary debate on matters which governments might like to have concluded on second reading of a Bill
- they are no substitute for properly structured legislation
- they can be used as a manifesto for purely political objectives

- the matters covered by them can be more appropriately dealt with by means of explanatory notes to an Act.

Objects provisions are drafted as clauses in a Bill using the same precise and concise terms used elsewhere in legislation and should focus on the results intended to be achieved rather than the means of achieving them. An objects clause in a new Bill to introduce scientific testing of breath or blood samples to determine alcohol levels and hence fitness to drive might be drafted:

The objects of this Act are:

- (a) to make those who drive motor vehicles after having consumed alcohol more aware of the risks they pose to themselves and others;
- (b) to reduce the number of accidents on the roads.

Grandiose claims in extravagant journalistic-type language should be avoided:

The objects of this Act are:

- (a) to curb the menace drunken drivers cause to themselves and to innocent drivers, passengers and pedestrians;
- (b) to force drivers of motor vehicles suspected of consuming alcohol to submit to breath and blood tests;
- (c) to reduce the carnage on the roads caused by such drivers.

Care needs to be taken to see that objects provisions as originally drafted do not change by virtue of amendments made, either to the Bill in its passage through Parliament, or subsequently to the Act.

12.2.5 Application provisions

There is a presumption that, unless a contrary intention appears, all legislation applies to:

- the whole area of the jurisdiction (including the territorial waters, the air-space above and the land below the surface)
- all persons within the jurisdiction, whether natural persons (including non-citizens) or artificial legal persons
- all acts or omissions that take place (wholly or in part) within the jurisdiction.

and so specific application provisions are not normally needed. There are some general exceptions to this, both at common law and in statutes, in relation to persons:

- who are recognised as having special privileges (the Crown/ Government/Republic; diplomats and those with similar status)
- with certain types of legal disabilities (minors; prisoners; aliens; the mentally ill; bankrupts).

However, these do not normally need to be expressly recognised in every Act; rather the laws providing for them will be understood as providing a background rule that applies in relevant cases only. Application provisions are, however, most commonly needed:

- to extend or restrict the geographical area of operation (see further Chapter 17):

This Act applies to Utopian citizens outside, as well as within, Utopia

- to restrict application to classes of persons or things:

This Act does not apply to second-hand goods of kinds set out in the First Schedule

- to restrict application to specific activities within a class:

Part IV does not apply to the preparation of food not intended for human consumption

- to apply to a specific time:

This Act applies to the estates of persons whose death occurred on or after 1 January 2017

- to bind the Crown/Government/Republic:

Parts 2 and 3 bind the Government

12.2.6 Duration provisions

These are **not** normally required, as the general rule is that legislation remains in force until such time as it is expressly repealed or revoked. It is, however, sometimes desirable to set a date on which legislation will cease to have effect (sometimes known as a ‘sunset provision’). A typical duration provision might read:

This Act expires on a date three years from its commencement [unless previously continued in force by resolution of] [the National Assembly] [both Houses of Parliament]

Use of these provisions is confined in practice to legislation that:

- is controversial or experimental in nature, where benefits are speculative or may lead to unpredictable consequences (e.g. decriminalisation of the possession of certain milder narcotics, abolition of the death penalty);
- deals with a short-term need (e.g. an amnesty in respect of firearms offences); or
- authorises the use of emergency powers.

